

ORIGINAL

**Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:

Amendment of Section 73.202(b)
Table of Allotments,
FM Broadcast Stations.
(Clio and Tuscola, Michigan)

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MM Docket No. 99-115
RM-9378

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JUN 16 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**REPLY COMMENTS IN SUPPORT OF
PROPOSED RULE MAKING**

Regent Licensee of Flint, Inc. ("*Regent*") submits these Reply Comments in support of the proposed reallocation of Channel 268A from Tuscola, Michigan to Clio, Michigan. Regent is the licensee of Station WWBN(FM), Tuscola, Michigan. The reallocation was originally sought by Regent's predecessor, Faircom Flint Inc. ("*Faircom*"), in a Petition for Rule Making filed May 5, 1998 (the "*Petition*"). On April 9, 1999, the Commission released a Notice of Proposed Rule Making seeking comments on the proposal ("*NPRM*"). Regent filed comments supporting the proposal on May 6, 1999. On May 28, 1999, The MacDonald Broadcasting Company ("*MacDonald*") filed comments opposing the reallocation ("*Opposition*"). Regent shows below that the Opposition fails to establish any reason not to adopt the proposal made in the NPRM, and amounts to nothing more than MacDonald seeking to avoid competition.

DISCUSSION

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List A B C D E

This is a simple case. The proposed allotment would provide Clio with its first local service, and more than double the number of persons enjoying reception service from WWBN(FM)'s present location. All the while, the approximately 100 residents of Tuscola will continue to enjoy the same level of service now provided by the station. While it is true that the

area known as Tuscola has no other aural services assigned to it, it is equally true that Tuscola is not a genuine community for allotment purposes. The area known as Tuscola¹ is neither a city nor census-designated place, and has eluded identification on many maps. In fact, the area encompasses no more than a small grouping of streets. See Exhibit A (map of area known as Tuscola). The Commission has indicated that it will set aside the usual presumption against removal of a sole local service where doing so is warranted in the public interest. This is just such a situation, as the NPRM acknowledges. NPRM at ¶ 3. See *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), as modified by *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 5 FCC Rcd 7094 (1990).

Unlike Tuscola, Clio is a cognizable community with a significant population—one that presently enjoys no local service. Clio's 1990 Census population of 2,629 persons substantially exceeds Tuscola's estimated population of 100. Commission policy plainly supports the allotment of Channel 268A to Clio under these circumstances. "In comparing mutually exclusive allotment proposals that would provide a first local service to either community, the more populated community is generally favored." NPRM at ¶ 3. Also weighing heavily in favor of the reallocation proposal is the Commission's finding that it would provide a new service to 8,000 people, for a gain-loss ratio of better than two to one. *Id.*²

¹ Channel 268A is presently allotted to the unincorporated area known as Tuscola, not to be confused with the township and county that surround it. See 47 C.F.R. § 202(b)(1998) (at page 93).

² The Commission notes in the NPRM that the anticipated loss area includes 2,800 people. See NPRM at ¶ 3.

The benefits of bringing a first local service to Clio clearly outweigh any cost of removing such service from Tuscola. Tuscola will continue to be well-served by stations licensed to other communities,³ and lies well within WWBN(FM)'s city-grade coverage contour as measured from the proposed reference point. Furthermore, there is no lack of service in the areas beyond Tuscola that will no longer be served by WWBN(FM). As the Commission's own analysis indicates, NPRM at ¶ 3, the anticipated loss area is considered "well-served" by existing aural facilities.

MacDonald's characterization of the reallocation proposal as "nothing more than a manipulative attempt to move-in [sic] on the Flint, Michigan urbanized area at the expense of a rural community," Opposition at 3-4, is grossly inaccurate. As explained above, the "rural community" of Tuscola will not suffer any significant deprivation of broadcast service. In turn, only 3.7% of the Flint Urbanized Area would receive city-grade coverage from the proposed reference coordinates for WWBN(FM).⁴ This hardly constitutes an aggressive "move-in" on Flint.

³ The unincorporated area known as Tuscola receives city-grade service from four AM and six FM stations, including WWBN(FM). A construction permit has also been granted that will permit a seventh FM station, WFBE(FM), to place a city-grade signal over Tuscola. See Exhibit C (Engineering Statement of duTreil, Lundin & Rackley)(hereafter "*Engineering Statement*"). The Commission has also granted a CP for a new FM station licensed to Frankenmuth that is expected to provide city-grade service to Tuscola, which is about five miles away. See FCC Broadcast Actions Public Notice, Release 44237A, granting application of The Frankenmuth Radio Company, Inc. for a new FM Station on 93.7 MHz, FCC File No. BPH-951121MN.

⁴ Although the Petition states that "[n]o part of the 70 dBu contour, when measured from the reference point, would fall upon an urbanized area," Petition at n.18, the Engineering Statement indicates that minor portions of the Flint and Saginaw Urbanized Areas (3.7% and 10.1%, respectively) would receive city-grade coverage from the proposed reference point. This *de minimis* urban presence is not even close to the fifty percent threshold which normally triggers Commission scrutiny. See *Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995).

Although Clio lies within the boundaries of the Flint Urbanized Area, it is connected to Flint by only a tenuous geographical thread that does not raise the “suburban community” issues identified in *Tuck* and its progeny. See *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988). A glance at the map clearly illustrates what area residents already know: Clio constitutes a distinct urban nucleus of its own, separate from the remainder of the Flint Urbanized Area. See Exhibit C (Declaration of Thomas Yost, Mayor of Clio) (hereinafter, “*Yost Declaration*”). The narrow corridor of “urban area” connecting Clio to the Flint Urbanized Area consists primarily of a railroad route, which hardly represents a close community link between Clio and Flint. What little development there is between the two communities consists primarily of retail and commercial establishments along Clio Road, a county road. See Map of Clio Area (attached to Yost Declaration). Clio exists as a distinct, independent community, in urgent need of a first local transmission service. See Yost Declaration at ¶ 4.

In its initial Petition, Faircom provided ample supporting information demonstrating that Clio has a high degree of independence and autonomy.⁵ The Commission summarized this information as follows: “Clio is an incorporated community Clio has a Mayor and city council form of government, its own volunteer fire department and police department Clio offers its residents a diverse selection of municipal services, businesses and cultural resources associated with a community of this size.” NPRM at ¶ 2. In addition to the facts cited by Faircom in its Petition, it should be noted that Clio has its own post office and zip code (48420). Clio has also had its own library since 1943, see *Clio Area Library* (visited

⁵ Given that only a tenuous strand of development links Clio to the Flint Urbanized Area, and that WWBN(FM) would place a city-grade signal over only a tiny fraction of the Flint Urbanized Area from the reference site, a “*Tuck* showing” in this case is unnecessary. However, it is also easily made. The facts presented in Faircom’s original Petition and in these Reply Comments clearly demonstrate that Clio is an independent community as contemplated in *Tuck*.

June 7, 1999) <<http://www.falcon.edu/gdl/clio.htm>>, and is home to the studios of NBC television affiliate WEYI-TV, located at 2225 W. Willard Road, *see WEYI-TV Home Page* (last modified Oct. 30, 1998) <<http://www.veyi.com>>. Residents of Clio and its surrounds, when asked, identify Clio as their hometown, not Flint. Yost Declaration at ¶ 3.

MacDonald refers in its Opposition to twelve stations serving the Flint radio market, Opposition at n.1, but fails to point out that Clio does not receive service from all of these stations. Four of the stations listed, WDZZ-FM, WFUM-FM, WGRI(FM), and WWCK, do not place a city-grade signal into Clio. In addition, two of the enumerated stations (WFLT and WFNT) provide only daytime service to Clio, *see Broadcasting & Cable Yearbook 1999*, at D-220 (1999), and a third (WSNL) has proposed to cease its licensed nighttime operations.⁶ No matter what service Clio may receive from stations licensed to *other* communities, Clio will reap particular benefits from the new service provided by WWBN(FM), because WWBN(FM) would be Clio's first local service. Such benefits lie at the core of the Commission's long-standing FM allotment priorities.

At bottom, MacDonald (which operates a plethora of stations across Michigan) has only one real concern: competition.⁷ From the proposed reference coordinates, WWBN(FM) could operate without a directional antenna (now used to protect service in Canada). As noted

⁶ *See* FCC Broadcast Applications Public Notice, Report No. 24133, reporting application of Citicasters Co. for CP to increase night power, change night transmitter location and make changes to antenna system, FCC File No. BP-971126AF. These changes would require the elimination of night operations by WSNL(AM), which now provides service to Clio.

⁷ MacDonald operates five AM and 5 FM stations in Michigan: WILS(AM) and WHZZ(FM) in the Lansing market, WSAM(AM), WKCQ(FM) and WEEG(FM) in the Saginaw market, and WLXT(FM), WLXV(FM), WKHQ(FM), WMBN(AM), WMKT(AM) and WATT(AM) in the Northwest Michigan market. In addition, it operates a six-county Muzak franchise. *See Radio Business Report, Source Guide and Directory*, Vol. 7 (1999).

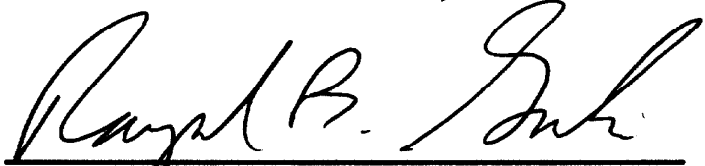
above, this fact combined with the site change will permit WWBN(FM) to more than double the number of persons it serves. This result, which plainly benefits the public, is precisely what MacDonald seeks to prevent.

CONCLUSION

As demonstrated herein and in the original Petition, the public interest will be well served by providing Clio with its first local service of *any* kind. The numerous benefits of the proposed reallocation from Tuscola to Clio, *see* NPRM at ¶ 3, with *no* meaningful reduction of coverage to Tuscola, present a unique and compelling case for reallocation. The proposed allocation to Clio presents a clearly preferable allocation and utilization of spectrum. Accordingly, Regent urges the Commission to adopt the proposal made in the NPRM and to reallocate Channel 268A from Tuscola, Michigan to Clio, Michigan.

Respectfully submitted,

REGENT LICENSEE OF FLINT, INC.



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June 16, 1999

* Admitted in Maryland only.

EXHIBIT A
Map of unincorporated village of Tuscola

Area Known as Tuscola

Tuscola

Mag 17.00

Wed Jun 16 13:07 1999

Scale 1:3,906 (at center)

200 Feet

100 Meters

Cass Riv

Local Road

Small Town

Water

Woodland

River/Canal

EXHIBIT B
Engineering Statement of duTreil, Lundin & Rackley

TECHNICAL STATEMENT
REPLY COMMENTS IN SUPPORT OF THE PETITION FOR RULEMAKING
MM DOCKET 99-115
CLIO, MICHIGAN
REGENT COMMUNICATIONS, INC.

This statement and the attached figures are prepared on behalf of Regent Communications, Inc. (herein "Regent") in support of their *Petition for Rulemaking* to reallocate the community of license of Channel 268A at Tuscola, Michigan to Clio, Michigan. Information regarding the coverage over urbanized areas, other aural stations providing service to the community of Tuscola and stations not providing service in Clio are discussed herein.

As can be seen from the map shown in Figure 1, the Saginaw and Flint, Michigan Urbanized Areas are partially encompassed by the proposed Clio facility. It is calculated that the proposed Clio 70 dBu coverage contour will encompass 10.1 percent and 3.7 percent of the Saginaw and Flint Urbanized Areas, respectively.

Other Aural Services Available to Tuscola

It is calculated that seven FM stations and four AM stations provide city grade service to the community of Tuscola. This is a total of eleven services. In addition, of the AM stations, WSNL(AM) and WFDF(AM) are predicted to provide nighttime interference-free (NIF) coverage. Figure 2 is a map showing the 70 dBu FM coverage contours and the 5 mV/m AM daytime coverage contours. A tabulation, further identifying the stations, is provided in Figure 3.

The community of Tuscola, as displayed in the herein maps, was geographically identified by the U.S. Geological Survey Geographic Names Information System (GNIS). Neither the U.S. Census nor the National Atlas defines the community of Tuscola.

Stations Not Providing Service to Clio

Using the Commission's standard propagation models, city grade coverage over the community of Clio is not predicted by stations WWCK(AM), 1570 kHz; WDZZ-FM on Channel 224A, WFUM-FM on Channel 216B and WGRI(FM) on Channel 205A. All the stations are assigned to Flint.

Distances to the AM coverage contours were predicted using the antenna patterns as identified in the Commission's AM database and the appropriate Ground Wave Field Strength versus Distance Graph of 47 CFR 73.184. Ground conductivities were obtained from FCC Figure M3. Distances to the FM contours were determined based on the method of 47 CFR 73.313.

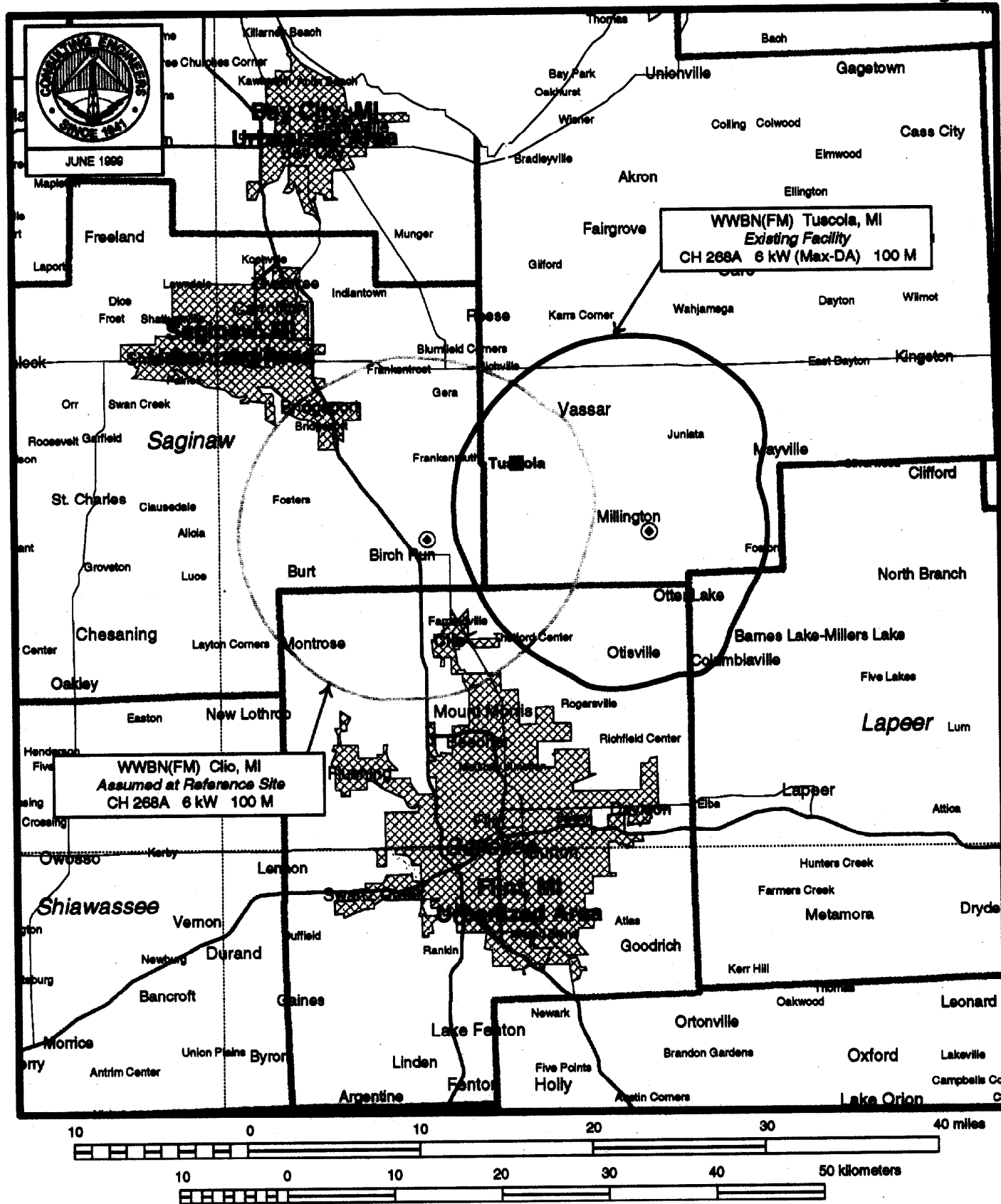


Charles A. Cooper

du Treil, Lundin & Rackley, Inc.
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Sarasota, Florida 34237
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June 15, 1999

Figure 1

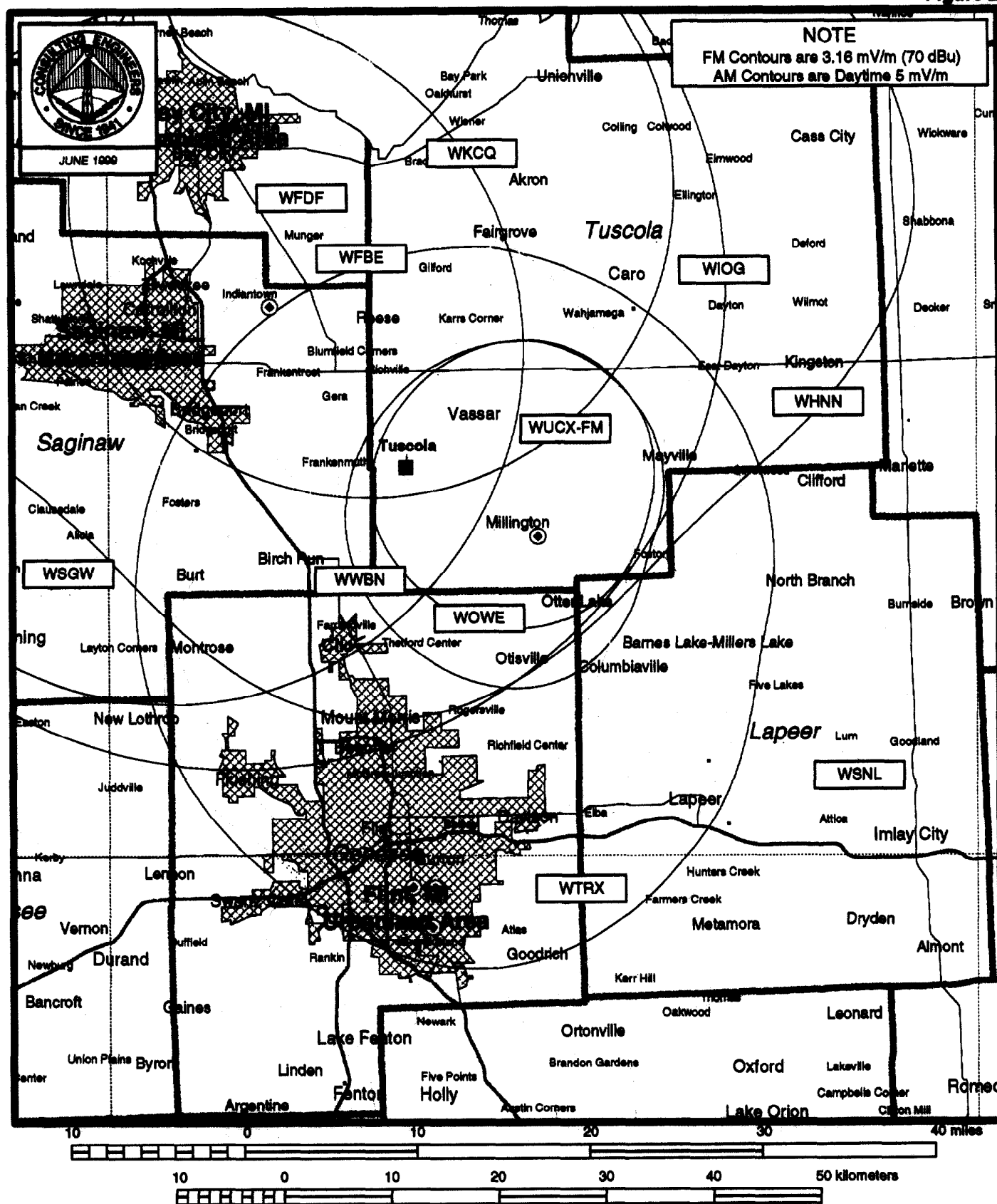


FCC PREDICTED 70 DBU COVERAGE CONTOURS

PREPARED FOR
REGENT COMMUNICATIONS, INC.

du Treil, Lundin & Rackley, Inc., Sarasota, Florida

Figure 2



OTHER AURAL STATIONS SERVING TUSCOLA

**PREPARED FOR
REGENT COMMUNICATIONS, INC.**

du Treil, Lundin & Rackley, Inc., Sarasota, Florida

TECHNICAL STATEMENT
 REPLY COMMENTS IN SUPPORT OF THE PETITION FOR RULEMAKING
 MM DOCKET 99-115
 CLIO, MICHIGAN
 REGENT COMMUNICATIONS, INC.

Tabulation of Aural Stations Providing
City Grade Service to Tuscola

<u>Call Sign</u>	<u>Community of License</u>	<u>State</u>	<u>Frequency</u>
WFBE(FM)	Flint	MI	95.1
WIOG(FM)	Bay City	MI	102.5
WKCQ(FM)	Saginaw	MI	98.1
WHNN(FM)	Bay City	MI	96.1
WUCX-FM	Bay City	MI	90.1
WWBN(FM)	Tuscola	MI	101.5
WOWE(FM)	Vassar	MI	989
WSNL(AM)	Flint	MI	600
WFDF(AM)	Flint	MI	910
WTRX(AM)	Flint	MI	1330
WSGW(AM)	Saginaw	MI	790

Notes:

- WFBE(FM) is predicted to provide city grade service from only its facility authorized by construction permit.
- WUCX-FM is an educational station.
- WSNL(AM), licensed facility, and WFDF(AM) also service Tuscola with a nighttime interference-free (NIF) contour.

EXHIBIT C
Declaration of Thomas Yost, Mayor of Clio



DECLARATION OF THOMAS YOST

I, Thomas Yost, state as follows:

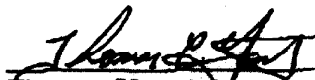
1. I am the Mayor of Clio, Michigan. I have served in this position since April 1997. I have resided in or near Clio for fifty years and am very familiar with the community and its development. This declaration is given in connection with a rulemaking proceeding at the Federal Communications Commission ("FCC") in which it is proposed to change the community of license of radio station WWBN-FM (the "Station") to Clio. I understand that, in connection with this proceeding, it has been suggested that Clio is really nothing more than a part of Flint, Michigan. This is not the case.
2. Clio has a long history and identity of its own separate and apart from our large neighbor to the south. Incorporated in 1873, our community has its own elementary schools and high school, more than 340 businesses, and at least 40 civic and community organizations and churches. There is a local theatre group and a local library (operating since 1943). Clio is home to the *Genesee County Herald* and the studios of WEYI-TV. We have our own fire and police departments, and elected city council. Together with our sister townships, we have a park system and recreational paths, which are the model for development through out Genesee County. Clio is the driving force behind the Trolley Line Trail Ways, a project to link communities in northern Genesee County with communities in southern Saginaw County with non-motorized trails.
3. Clio is geographically very distinct from Flint, and its is unclear to me why our town would be included in the U.S. Census Flint urbanized area. The area between Flint and Clio is rural in character. Because of this, when driving between the communities, their boundaries are quite apparent to even the most casual observer. Indeed, as the attached map shows, the density of development between Clio and Mt. Morris (an outer suburb of Flint) is minimal. The residents of the City of Clio and those of Vienna and Thetford townships consider ourselves as part of the Clio community. That is how we answer the question, "Where are you from?" While some of our residents work in the Flint area, many do not. Bay City, Saginaw, Birch Run and Frankenmuth employ a good number of Clonians. Our Master Plan refers to Clio as being the gateway to those communities.



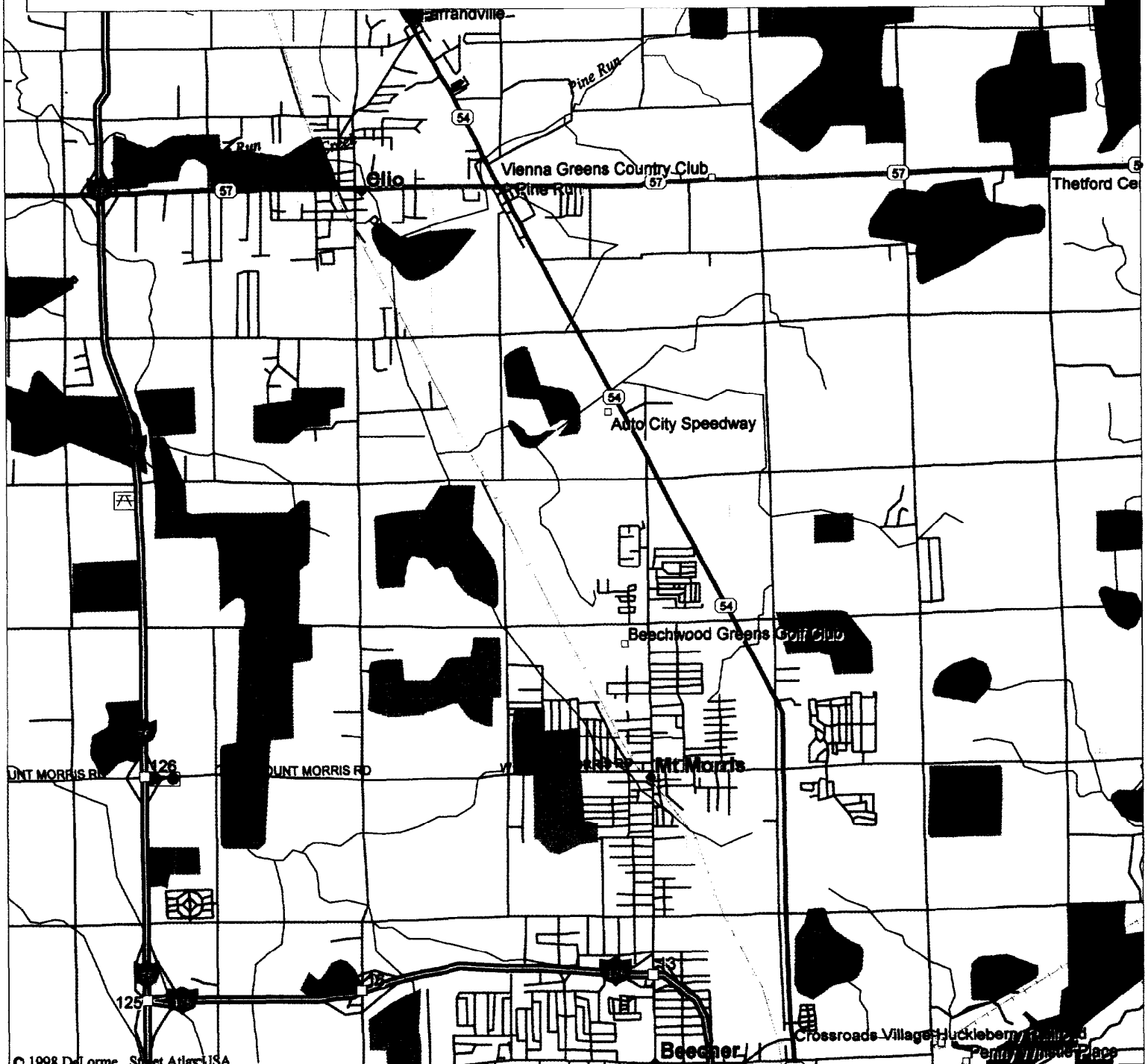
4. I understand that if the community of license of the Station is changed to Clio, the Station will be obligated to provide some programming that addresses the community concerns of the citizens of our community. No radio or television station now has that obligation with respect to Clio, so such an obligation would be a very valuable asset to our community. It would provide a broadcast forum for issues of unique concern to Clio, which is a forum that now does not exist and is not met by stations licensed to other communities.

The foregoing statements are true and correct to the best of my knowledge, information and belief.

6-16-99
Date


Thomas Yost, Mayor

Clio Area



© 1998 DeLorme, Street Atlas USA

Mag 13.00

Wed Jun 16 13:05 1999

Scale 1:62,500 (at center)

1 Miles

2 KM

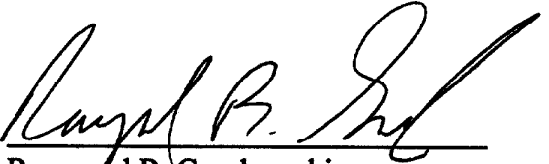
- | | |
|---------------------------|---------------------|
| Local Road | Railroad |
| Major Connector | Point of Interest |
| State Route | Small Town |
| Primary State Route | Exit/Food |
| Interstate/Limited Access | Exit/Other Services |
| Rest Area with facilities | Locale |
| Exit | Cemetery |
| Utility/Pipe | Water |

Certificate of Service

I hereby certify that on this 16th day of June, 1999, copies of the foregoing Reply

Comments in Support of Proposed Rule Making and accompanying exhibits were served by first-class mail upon:

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